

AN ACT

relating to compliance with state and federal environmental permits  
as a defense to certain actions for nuisance or trespass.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 7, Water Code, is amended  
by adding Section 7.257 to read as follows:

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A  
person, as defined by Section 382.003, Health and Safety Code, who  
is subject to an administrative, civil, or criminal action brought  
under this chapter for nuisance or trespass arising from greenhouse  
gas emissions has an affirmative defense to that action if the  
person's actions that resulted in the alleged nuisance or trespass  
were authorized by a rule, permit, order, license, certificate,  
registration, approval, or other form of authorization issued by  
the commission or the federal government or an agency of the federal  
government and:

(1) the person was in substantial compliance with that  
rule, permit, order, license, certificate, registration, approval,  
or other authorization while the alleged nuisance or trespass was  
occurring; or

(2) the commission or the federal government or an  
agency of the federal government exercised enforcement discretion  
in connection with the actions that resulted in the alleged  
nuisance or trespass.

1        (b) This section does not apply to nuisance actions solely  
2 based on a noxious odor.

3        SECTION 2. Section 7.257, Water Code, as added by this Act,  
4 applies only to an administrative enforcement action, a civil  
5 action, or a prosecution that is commenced on or after the effective  
6 date of this Act. An administrative enforcement action, a civil  
7 action, or a prosecution commenced before the effective date of  
8 this Act is governed by the law in effect on the date the action or  
9 prosecution commenced, and that law is continued in effect for that  
10 purpose.

11        SECTION 3. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2011.

S.B. No. 875

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I hereby certify that S.B. No. 875 passed the Senate on April 4, 2011, by the following vote: Yeas 23, Nays 8; May 26, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 23, Nays 8.

Lately Spaw

Secretary of the Senate

I hereby certify that S.B. No. 875 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 78, Nays 65, one present not voting; May 27, 2011, House granted request of the Senate for appointment of Conference Committee; May 28, 2011, House adopted Conference Committee Report by the following vote: Yeas 135, Nays 7, one present not voting.

Robert Haney

Chief Clerk of the House

Approved:

17 JUN '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
O'CLOCK

JUN 17 2011

Boyd R. Davis

Secretary of State